IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.71 OF 2005

AND

CIVIL APPLICATION NO.70 OF 2005

AND

CIVIL APPLICATION NO.18 OF 2002

IN

REVIEW PETITION NO.6 OF 2002

AND

REVIEW PETITION NO.6 OF 2002

...

Bheemacharya Balacharya Varkhedakar ...Appellant

v/s.

Executive Officer of

Vitthal Rukmini Temple Committee

Pandharpur ...Respndent

...

CORAM: D.K.DESHMUKH, J.

DATED: 4TH JULY, 2007

P.C.:

1. All these applications arise out of order dated 25-11-1997 passed by the Court in Civil Revision Application No.860 of 1991.

2. The Appellant filed Civil suit before the Civil Judge, Junior Division, Pandharpur, being Regular Civil Suit No.240 of 1988. The principal relief claimed in the civil suit is a decree and declaration that the Managing Committee of Vitthal Rukmini Temple at Pandharpur is not constituted in accordance with law and that the Committee can not function and collect amount from the devotees visiting the temple. In that suit an application was made for temporary injunction mainly restraining the Managing Committee from collecting amount from the devotees. That application was rejected by the trial court by a reasoned order dated 1-7-1991. Against that order an appeal was filed. That appeal was decided by order dated 14th October, 1991 passed by the Addl.District Judge, Pandharpur. The learned District Judge by a reasoned order dismissed the appeal. Against both

these orders, Civil Revision Application No.860 of 1991 was filed in this court. That Civil Revision Application was decided by order dated 25th November, 1997. The Court passed a detailed order for dismissing the Revision Application. The Court held that it does not appear that there is any prima facie case in favour of the Plaintiff. The Court also held that even assuming that the Plaintiff has made out a prima facie case or a strong prima facie case, still the Plaintiff is not entitled to temporary injunction restraining the Managing Committee of the temple from collecting amount from the devotees. Because the aspect of balance of convenience and irreparable loss is not in favour of the Plaintiff. The Court observed that if the injunction is granted restraining the Managing Committee from charging fees as per the Resolution dated 23-3-1990, then the provision has to be made to safeguard the interest of the Temple Committee, in case ultimately the suit fails and is dismissed. Because if the temporary is granted the Managing Committee will not be able to collect fees from the devotees because of the order of injunction, and there is no means by which those amounts can be recovered by the Managing Committee if the suit fails. Therefore, it is observed in the

order that the court asked the Plaintiff whether he can make any provision in this regard. He expressed his inability to make any provision. The Court, therefore, held that grant of blanket injunction restraining the Managing Committee from collecting fees cannot be granted. The Court, however, directed the Managing Committee to maintain accounts in relation to amounts received by the Managing Committee pursuant to the Resolution dated 23-6-1990 from the devotees. The Court observed that if the accounts are maintained by the Managing Committee and if ultimately in the suit court finds that the Managing Committee was not justified in recovering the amount, an order for refund of the amount can be made. The order rejecting the Revision Application was made in open court and before the court a request was made on behalf of the Plaintiff for grant of leave to appeal to the Supreme Court. The court declined to grant leave holding that no question of general public importance arises.

3. The Plaintiff, in stead of approaching the Supreme Court challenging the order, filed Review Application No.6 of 2002 seeking review of the order. There was delay in filing that review application.

Therefore, civil application No.18 of 2002 was filed seeking an order for condonation of delay. On the application for condonation of delay on 10-6-2002 the court issued notice to the other side. When the matter appeared before the court on 20-11-2002, the Plaintiff remained absence, therefore, that application for condonation of delay was dismissed for default. Therefore, Civil Application No.71 of 2005 was filed for restoration of the Civil application for condonation of delay and Civil Application N.70 of 2005 was filed for restoration of Review Application.

4. When these applications were called, I pointed out to the Plaintiff, who appears in person, that in his suit temporary injunction was never granted by any court. His suit was filed in the year 1988, since 1988 till today at no point of time any order of temporary injunction ever operated in the suit. Therefore, it is not only difficult but impossible for any court specially in review application to grant him an order of temporary injunction. The order of temporary injunction basically will operate against the Managing Committee charging fees and the Managing Committee has been charging fees since 1990.

Therefore, it is impossible for the court to stop the Managing Committee from recovering the fees from the devotees, which it is doing from 1990. I told the Plaintiff that in stead of arguing these applications, he should contest his suit which is pending in the trial court. The Plaintiff, however, insisted on arguing his applications. Because of the insistence of the Plaintiff to argue the applications, I had no option but to permit him to argue the applications. He argued the matter for more than 45 minutes.

5. All the submissions made by him were mainly on the validity of the Enactment by which the management of the Vitthal Rukmini Temple has been taken over and the entitlement of the Committee of the Management to function. I pointed out to him that in the order dated 25-11-1997 of which the review is sought, the court has taken into consideration these contingencies that the Plaintiff has prima facie case in his favour, but the court has held that in spite of that the Plaintiff is not entitled to temporary injunction because aspect of balance of convenience and irreparable loss is not in favour of the Plaintiff and unless the court finds all the three

aspects namely prima facie case, balance of convenience and irreparable loss in favour of the Plaintiff, court can not make an order of temporary injunction. Still the Plaintiff continued to argue on the validity of enactment. It is obvious that due to passage of time it is not possible now to grant any interim order in favour of the Plaintiff, because that would result in stopping something which is being done for the last atleast 17 years.

6. There is no substance in the review application. The order is incapable of being reviewed. But as observed above despite the Plaintiff being told categorically, he continued to argue the matter, with the result he consumed more than 45 minutes of the court's time. Considerable public money is spent on maintaining the court, therefore, no litigant has right to waste the court's time. The Plaintiff has wasted the court's time, despite he being repeatedly told that he has no case, his review application is absolutely frivolous. In my opinion, therefore, not only these applications mentioned above are liable to be rejected, but exemplary costs will have to be imposed on the Plaintiff to discourage the other litigants following in the foot step of the

Plaintiff.

7. The applications are, therefore, rejected. The Plaintiff is directed, as and by way costs of these applications, to pay Rs.30,000/- to the Defendant. The amount of costs shall be deposited by the Plaintiff in the trial court where his suit is pending, within a period of six weeks from today. If the amount of costs is not deposited within the aforesaid period, then the Defendant shall be entitled to seek appropriate order from the trial court.

...